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August 19, 2014

Via Certified Mail – Return Receipt Requested

Re: Notice of Violations and Intent to File Suite under the Clean Water Act

Please find attached the above-referenced Notice as it has come to our attention that the first notice sent July 24, 2014 may not have included all the pages.

Very truly yours,



Hans W. Herb, Esq.

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7/24/2014

Tim Eriksen, Director of Public Works Dept.
City Of Ukiah
300 Seminary Ave.
Ukiah, CA 95482

Jane A. Chambers, City Manager
City Of Ukiah
300 Seminary Ave.
Ukiah, CA 95482

Re: Notice of Violations and Intent to File Suit under the Clean Water Act

Dear Director and City Manager:

NOTICE

The Clean Water Act (“CWA” or the “Act”) §505(b), 33 U.S.C. §1365(b), requires that sixty (60) days prior to the initiation of a civil action under CWA §505(a), 33 U.S.C. §1365(a), a citizen must give notice of intent to sue to the alleged violator, the Environmental Protection Agency (“EPA”) and the State in which the alleged violations occur.

California Environmental Protection Association (“CEPA”) hereby places the City of Ukiah (“City”) on notice that following the expiration of sixty (60) days from the date of this Notice, CEPA intends to bring suit in the United States District Court against the City for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA §505(a)(1), 33 U.S.C. §1365(a)(1), the Code of Federal Regulations, and the North Coast Regional Water Quality Control Board’s Water Quality Control Plan

("Basin Plan").

The CWA regulates the discharge of pollutants into navigable waters, including the discharge of pollutants through stormwater. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA §402, 33 U.S.C. §1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards and limitations specified in a National Pollution Discharge Elimination System ("NPDES") Permit define the scope of the authorized exception to the 33 U.S.C. §1311(a) prohibition, such that the violation of a permit limit places a polluter in violation of 33 U.S.C. §1311(a), and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. §1365 to enforce effluent standards or limitations, including violations of 33 U.S.C. §1311(a), 33 U.S.C. §1342(p), and 33 U.S.C. §1365(f)(1).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the agency operates satisfies certain criteria. *See* 33 U.S.C. §1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary Regional Water Quality Control Boards to issue NPDES permits. The entity responsible for issuing NPDES permits, including municipal stormwater permits, and otherwise regulating discharges in the region at issue in this Notice is the North Coast Regional Water Quality Control Board ("RWQCB").

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement CEPA has identified violations of the City's Storm Water Management Program ("SWMP") in violation of the NPDES permit requirements for municipal stormwater discharges - CWA §402(p), 33 U.S.C. §1342(p).

2. *The activity alleged to constitute a violation.*

CEPA has set forth narratives below describing the violations of the City's SWMP and describing with particularity specific conditions observed by members of CEPA.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violations identified in this Notice is the City of Ukiah and those of its employees responsible for compliance with its SWMP adopted on February 28, 2006.

4. *The location of the alleged violation.*

The location of the various violations are identified in records created and/or maintained by the City and by the RWQCB which relate to the County's SWMP as further described in this Notice.

5. *The date or dates of violation or a reasonable range of dates during which the alleged violation occurred.*

Information available to CEPA indicates ongoing violations from May 2, 2009 through May 2, 2014. The range of dates covered by this Notice is May 2, 2009 through May 2, 2014. CEPA will from time to time update this Notice to include all violations which occur after the range of dates currently covered. Some violations are continuous and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The full name of the person giving notice is California Environmental Protection Association, referred to in this notice as "CEPA." California Environmental Protection Association is dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams, and groundwater in California. CEPA is organized under the laws of the State of California, and located in Windsor, California. CEPA may be contacted via email through its attorneys: hans@tankman.com

CEPA has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

Hans W. Herb, Esq.
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P.O. Box 970
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BACKGROUND AND VIOLATIONS

CEPA alleges the City has violated the CWA, the Basin Plan, and the Code of Federal Regulations by virtue of violations of the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004, Water Quality Order No. 2003-005-DW, Waste Discharge Requirements (WDRs) for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems* ("General Permit") and the City's SWMP. The violations identified below are supported by the observations of members of CEPA. It is alleged that these violations are continuing.

The City is a municipal discharger under CWA §402(p) and as such must operate under a municipal stormwater permit - CWA §402(p) (3) (B), 33 U.S.C. §1342(p) (3) (B). The City's operations are located within the watershed basin of the Russian River, a water of the United States. The City provides stormwater management for areas within the City limits of the City of Ukiah. The City was notified of its designation as a Municipal Separate Stormwater Sewer System (MS4) in 2003. Designation as an MS4 required the City to develop and implement a Stormwater Management Plan ("SWMP") to reduce the contamination of stormwater runoff and prohibit illicit discharges. The City completed and adopted its SWMP on February 28, 2006.

As an MS4, the City is required to comply with the General Permit which "prohibits the discharge of materials other than stormwater that are not 'authorized non-stormwater discharges.'" *SWRCB Water Quality Order NO. 2003-0005-DWQ § D.2.c*. The General Permit also incorporates discharge prohibitions contained in the Basin Plan. In addition, the General Permit requires the City to develop a SWMP which includes six (6) minimum control measures:

- Public Education and Outreach;
- Public Participation/Involvement;
- Illicit Discharge Detection and Elimination;
- Construction Site Runoff Control;
- Post-Construction Runoff Control; and,
- Pollution Prevention/Good Housekeeping.

The City must implement its SWMP using appropriate stormwater management controls, or best management practices ("BMPs"). The City must also develop measurable goals for the SWMP and evaluate the effectiveness of the SWMP through an annual report.

The EPA has published BMPs for the above-defined minimum control measures.

The BMP for Pollution Prevention/Good Housekeeping compels MS4s to address stormwater runoff and unauthorized non-stormwater discharges from their own facilities and activities. CEPA contends the City is in violation of the Pollution Prevention/Good Housekeeping measure by failing to create policies and procedures for maintenance of stormwater runoff controls from the City's Corporation Yard and airport. The City has failed to employ basic BMPs to control polluted stormwater runoff and unauthorized non-stormwater discharges from its corporation yard and various equipment and uncovered piles of debris into a graded drainage ditch, down gradient of the corporation yard, which discharges into a wetlands area immediately adjacent to the Russian River. Both the wetlands and the Russian River are waters of the U.S. under the CWA. Spools of wire and other electrical equipment are left uncovered. Piles of broken asphalt and cement are left uncovered. Old and new telephone poles are stored uncovered, some treated with creosote. Street sweepings and rubble from street improvements are deposited in piles with no cover. There are no wattles or other devices to contain leachate from the above-described aggregations of contaminated waste from migrating to the wetlands and the Russian River via the drainage ditch. Each of the above described unprotected piles is a point source under the CWA.

In the last week of January 2014, the City Of Ukiah Crews with City equipment "open cut "the drainage ditch down gradient of the Ukiah Corp Yard on both the East and West sides of Airport Rd., just north of the large culvert that goes under the railroad tracks, and flows to the wetland area to the east. The grading in the bottom of the ditch caused the earth materials to be broken loose of its compacted state. In the first two weeks of February heavy rains washed the loose soils south down the ditch to the culvert under the railroad tracks and into the wetlands to the east. Several cubic yards of material ended up filling a large area of the wetlands. No BMPs were employed to deal with project. The illegally discharged fill material remains in the wetlands unmitigated.

There is an uncovered grate beneath the vehicle wash rack for City vehicles at the City's corporation yard, so that wash water is illegally discharged to the City's sewer system. City staff regularly wash down concrete areas with no runoff controls, so that polluted wash water is discharged, as an unauthorized non-stormwater discharge, to the drainage ditch which discharges to the wetlands and the Russian River.

Water entering the ditch area from the airport near the underground pipe along Airport Rd. is a substantial contribution of additional polluted stormwater runoff to the wetlands. These wetlands are the largest within Ukiah City limits and the closest to the Russian River. The City's violations of the General Permit and its SWMP threaten the beneficial uses of the Russian River and its tributaries. According to the Basin Plan, beneficial uses of the Upper Russian River Basin include municipal and domestic supply; agricultural supply; groundwater recharge; freshwater replenishment; water contact

recreation; commercial and sport fishing; warm and cold freshwater habitat; wildlife habitat; and rare, threatened, and endangered species habitat. The Russian River in the Ukiah area is listed for sedimentation and temperature on California's 2002 Section 303(d) List Of Water Quality Limited Segments (Ukiah SWMP p.6) Sedimentation/Siltation is caused in part by channel erosion, erosion/siltation, habitat modification, and stream bank modification/destabilization. Increased temperatures result from flow non-point source runoff, habitat modification, and stream bank modification/destabilization Discharges of polluted stormwater and unauthorized non-stormwater discharges from the City's Corporation Yard and Airport are contributing factors to sedimentation/siltation and increased temperature of the Russian River. The Russian River is habitat for Coho salmon and Steelhead trout, both of which are listed as threatened under the ESA. Higher temperatures in the Russian River may be a source of impairment of these cold water fisheries.

The current deficiencies in the City's implementation of the General Permit and the City's SWMP can cause further impairment of the Russian River for both sedimentation/siltation and increased temperatures, and are alleged to have further degraded the Russian River. The City has no current procedures in place for control and management of runoff from its Corporation Yard. The implementation of appropriate BMPs by the City at its Corporation Yard could decrease the sedimentation/siltation and avoid further temperature impairment of the Russian River.

REMEDIAL MEASURES REQUESTED

A. RUNOFF CHANNELIZATION AND COLLECTION

1. Completion and implementation of a plan for the channelization and collection of stormwater runoff and non-stormwater runoff, from the City's Corporation Yard and Airport, in a manner which prevents discharge to the drainage ditch which discharges to the wetlands and Russian River, by the use of wattles and other control measures, at the City's discretion.
2. Placement of a pad over the gate at the vehicle washing station for the collection of vehicle wash water.
3. Completion and implementation of a plan for the treatment and/or disposal of collected stormwater and non-stormwater runoff to an appropriate facility.

B. COVERAGE OF EQUIPMENT AND DEBRIS PILES

1. All stored equipment, including electrical equipment and telephone poles, shall be covered at all times except when access is required.

2. All piles of broken concrete and asphalt, street sweepings, rubble from road improvements and any other aggregated debris shall be covered at all times except when access is required.
- C. 1. Develop and implement a plan to restore the wetlands, including the removal of the sedimentation and all pollutants.

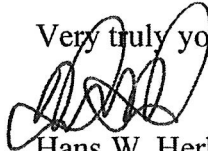
CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of CEPA who reside and recreate in the affected community. The members of CEPA use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the City's violations of the CWA as set forth in this Notice.

CEPA believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter CEPA intends to file a citizen's suit under CWA § 505(a) against the City for the violations identified in this Notice.

During the 60-day notice period, CEPA is willing to discuss effective remedies for these violations. If the City wishes to pursue such discussions, it is suggested that a dialog be initiated promptly. CEPA does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



Hans W. Herb, Esq.

CC: Administrator
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Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency, Region 9
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P.O. Box 100
Sacramento, California 95812